



DEPARTMENT OF THE NAVY
NAVAL MEDICAL RESEARCH CENTER DETACHMENT

LIMA, PERU
UNIT NUMBER 3800
APO AA 34041 - 3800

IN REPLY REFER TO

NMRCDINST 5354.2D
16 Jan 04

NMRCD INSTRUCTION 5354.2D

From: Officer-in-Charge
To: All NMRCD Personnel

Subj: POLICY ON SEXUAL HARASSMENT AND PROCEDURES FOR FILING AND HANDLING OF COMPLAINTS OF SEXUAL HARASSMENT.

Ref: (a) SECNAVINST 5300.26C Series

Encl: (1) Department of the Navy Definition of Sexual Harassment
(2) Range of Behaviors Which Constitute Sexual Harassment
(3) Officer in Charge NMRCD Policy Statement on Sexual Harassment

1. Purpose. To set forth NMRCDs policy on sexual harassment, to define the responsibilities of all personnel in supporting this policy, and to establish procedures for filing and handling of complaints of sexual harassment as outlined in reference (a). This instruction is a complete revision and should be reviewed in its entirety.

2. Cancellation. NMRCDINST 5354.2C

3. Applicability. This instruction applies to all NMRCD civilian and military personnel.

4. Definition and Terms. The following definitions and terms apply:

a. Enclosure (1) defines sexual harassment in accordance with reference (a).

b. Enclosure (2) provides a nontechnical discussion of sexual harassment.

5. Discussion.

a. Sexual harassment in the workplace is a matter of concern. All military and civilian personnel in the Department of the Navy (DON) have a responsibility for maintaining high standards of honesty, integrity, impartiality, and conduct to ensure proper performance of the government's business and maintain public confidence. Sexual harassment violates these standards and such conduct cannot be condoned.

b. All employees have a right to be free from sexual

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harassment in their work environment, sexual harassment lowers morale and interferes with the productive work of its victims, its perpetrators, and their co-workers.

c. References (a) and (b) provides comprehensive DON policies for all military and civilian personnel on the identification, prevention, and elimination of sexual harassment and to establish regulations to enforce that policy.

6. Policy. This Detachment is committed to maintaining a work environment free from unlawful discriminatory practices and inappropriate behavior as stated in enclosure (3). Leadership is the key to eliminating all forms of unlawful discrimination. Sound leadership must be the cornerstone of the effort to eliminate sexual harassment. In support of this commitment, it is NMRCD policy that:

a. Sexual harassment is prohibited. All NMRCD personnel, military and civilian, will be provided a work environment free from sexual harassment.

b. All NMRCD personnel, military and civilian, will be educated and trained, upon accession (within 90 days to the extent possible) and annually thereafter, in the areas of identification, prevention, resolution, and elimination of sexual harassment: Training programs will use a three-tiered behavioral zone approach to explain the spectrum of sexual harassment, as outlined in enclosure (2).

c. Individuals who believe they have been sexually harassed will be afforded multiple avenues to seek resolution and redress. The Officer-in-Charge and those in supervisory positions will ensure that notification of sexual harassment can be made in a command climate that does not tolerate acts of reprisal, intimidation, or further acts of harassment. All personnel will be made aware of the avenues of resolution and redress that are available.

d. All reported incidents of sexual harassment will be investigated and resolved at the lowest appropriate level. The nature of the investigation will depend upon particular facts and circumstances and may consist of informal inquiry where that action is sufficient to resolve factual issues. All incidents will be resolved promptly and with sensitivity. Confidentiality will be maintained to the extent possible. Feedback will be provided to all affected individuals consistent with the requirements of the Privacy Act and other pertinent laws, regulations, and negotiated agreements.

e. No NMRCD employee shall:

(1); Commit sexual harassment, as defined in enclosure

(2) Take reprisal action against a person who provides information on an incident of alleged sexual harassment;

Knowingly make a false accusation of sexual harassment; or

(4) While in a supervisory or command position, condone or ignore sexual harassment of which he or she has knowledge or has reason to have knowledge.

7. Responsibility.

a. Department Heads and other supervisors are responsible for leading the men and women under their jurisdiction. It is not the intent of this instruction to impair their ability to take appropriate actions to carry out leadership responsibilities. They must set the example in treating all people with mutual respect and dignity, fostering a climate free of all forms of discrimination, and eliminating sexual harassment. Such a climate is essential to maintain high morale, discipline, and readiness. Department Heads and other supervisors are responsible for and must be committed to preventing sexual harassment in their work environments. They must not ignore or condone sexual harassment in any form, and they must take whatever action is required to ensure that a recipient of sexual harassment is not subsequently also victim of reprisal or retaliation. These responsibilities regarding sexual harassment are the broader responsibility of Officer-in-Charge, Department Heads and other supervisors to foster a positive climate and take appropriated corrective action when conduct is disruptive, provoking, discriminatory, or otherwise unprofessional.

b. Individuals who believe they have been sexually harassed should address their concerns or objections regarding the incident directly with the person demonstrating the harassing behavior. Persons who are subjected to or observe objectionable behavior should promptly notify the chain of command if:

(1) The objectionable behavior is a direct superior in the chain of command or the chain of command condones the conduct or ignores a report. Individuals who have been subjected to or who observe objectionable behavior are encouraged to promptly

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communicate the incident with the next superior in the chain of command.

c. Filing false complaints of sexual harassment is as reprehensible as sexual harassment itself and will be dealt with accordingly.

d. All personnel are responsible for treating others with mutual respect and dignity. This means fully and faithfully complying with this instruction. All personnel are accountable for their actions.



J K BAIRD

DEPARTMENT OF THE NAVY
DEFINITION OF SEXUAL HARASSMENT

Sexual harassment is a form of sex discrimination that involves unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- a. Submission to or rejection of such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career, or
- b. Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person, or
- c. Such conduct interferes with an individual's performance or creates an intimidating, hostile, or offensive environment.

Any person in a supervisory or command position who uses or condones implicit or explicit sexual behavior to control, influence, or affect the career, pay, or job of a military member or civilian employee is engaging in sexual harassment. Similarly, any military member or civilian employee who makes deliberate or repeated unwelcome verbal comments, gestures, or physical contact of a sexual nature is also engaging in sexual harassment.

Enclosure (1)

RANGE OF BEHAVIORS WHICH CONSTITUTE SEXUAL HARASSMENT

- Ref: (a) U.S. NAVY - MARINE CORPS WHITE PAPER ... From The Sea, The 21ST Century" of Sep 92 (NOTAL)
(b) Title VII of The Civil Rights Act of 1974, as amended, 42 U.S.C. 2000e
(c) 29 C.F.R. 1604.11

1. Introduction. This enclosure explains and illustrates behaviors, which may constitute sexual harassment by describing in laypersons, terms what sexual harassment is and how it occurs in the work environment. This enclosure is intended to be used as a guide for developing training programs and to assist military members and civilian employees in distinguishing between acceptable and unacceptable behavior in the work environment. DON policy and prohibitions governing sexual harassment are contained in the basic instruction.

2. Background.

a. The world has changed dramatically in recent years, and America's national security policy has also changed. Reference (a) defines a vision for the Navy and Marine Corps to support that policy into the 21st Century. The new vision represents a fundamental shift away from open-ocean warfare on the sea toward joint operations from the sea, as part of the nation's "sea-airland" team. The need to maximize efficiency and teamwork remains firm. The Navy-Marine Corps Team must be comprised of an optimally integrated group of men and women, who must be able to work together to get the job done. Each member of the team is entitled to be treated fairly, with dignity and respect, and must be allowed to work in an environment free of discrimination.

b. Sex discrimination in the workplace is not a new problem; however, prior to 1964 there was inadequate legal protection against it. In 1964, the U.S. Congress passed Title VII of the Civil Rights Act, which prohibits various forms of discrimination in employment. In 1972, the Civil Rights Act was made applicable to federal employees (reference (b)), but it was not until the late 1970's that sexual harassment began to be recognized as a form of sex discrimination. In 1980, the Equal Employment Opportunity Commission established to enforce Title VII, issued the regulations in reference (c). These regulations include a definition of sexual harassment and conditions under which an employer may be held liable for its occurrence. They have been used as a basis for legal actions brought against employers for violating the Civil Rights Act. The EEOC definition of sexual harassment has been upheld by the Supreme Court and has also been used as a basis for DOD policies on sexual harassment.

c. In the 1990's sexual harassment is receiving increased attention. The costs to resolve incidents of sexual harassment are significant. Even more harmful and costly, however, are the negative effects sexual harassment has on productivity and readiness. These include costs

Enclosure (2)

associated with increased absenteeism, greater personnel turnover, lower morale, decreased effectiveness, and a loss of personal, organizational, and public trust. While not easily quantified, these costs are just as real and seriously affect the DON's ability to meet the needs of our Nation.

3. Sexual Harassment. Basically, sexual harassment means bothering someone in a sexual way. In the context of this instruction, it is behavior that is unwelcome, is sexual in nature, and is connected in some way with a person's job or work environment. A wide range of behaviors can meet these criteria, and therefore, constitute sexual harassment. Even with this rather simplistic way of explaining it, trying to determine exactly what kinds of behavior constitute sexual harassment often is not easy. The policy established by this instruction is not intended to prevent the types of behavior which are appropriate in normal work settings and which contribute to camaraderie.

4. Discussion. For a person's behavior to be considered sexual harassment, it must meet three criteria: it must be unwelcome, be sexual in nature and occur in or impact on the work.

a. Unwelcome behavior is behavior that a person does not ask for and which that person considers undesirable or offensive. Not everyone has the same perception of "undesirable or offensive". What is acceptable for some people is not acceptable for others. So whose perception should be used? Since the person being subjected to the behavior--the recipient--is the one being affected, it is the recipient's perception that counts. As long as the recipient is a reasonable person and not overly sensitive, behavior which the recipient finds unwelcome should be stopped. Using this "reasonable person standard," from the perspective of the recipient, is really no more than using common sense.

b. Behavior, which is sexual in nature, is fairly easy to determine. Telling sexually explicit jokes, displaying sexually suggestive pictures, and talking about sex are obviously "sexual in nature". Some people would consider other behaviors, such as touching, to be sexual in some cases but not others. Not all touching is sexual in nature, but if the touching is to certain parts of the body or is done suggestive, it definitely is. Again, using common sense will normally be enough to determine whether or not a certain behavior is sexual in nature.

c. For sexual harassment to occur, unwelcome sexual behavior must occur in or impact on the work environment:

(1) When recipients are offered or denied something that is work-connected in return for submitting to or rejecting unwelcome sexual behavior, they have been subjected to a type of sexual harassment known as "quid pro quo" ("this for that"). Examples include: getting or losing a job, a promotion or demotion, a good or bad performance evaluation, etc. Basically, if any workconnected decisions are made based on the submission to or rejection of the unwelcome

Enclosure (2)

sexual behavior, sexual harassment has occurred. Normally, this is from a senior to a junior, because the senior person has something to offer.

(2) When the unwelcome sexual behavior of one or more persons in a workplace interferes with another person's work performance, sexual harassment has occurred. If the behavior produces a work atmosphere which is offensive, intimidating, or abusive to another person, whether or not work performance is affected, a type of sexual harassment has occurred called "hostile environment". The following are a few examples of behavior that could create a hostile environment:

(a) Using sexually explicit or sexually offensive language.

(b) Displaying sexually-oriented posters or calendars of nude or partially-clad individuals.

(c) Touching someone in a suggestive manner (e.g., intentionally brushing against them or pinching).

(d) Giving someone unwelcome letters, cards, or gifts of a personal nature, when these items have sexual overtones.

(e) Unwanted or uninvited pressure for dates.

(3) Certain types of unwelcome sexual behavior do not have to create a "hostile environment" to be considered sexual harassment. If the behavior occurs in the work environment and is unreasonable, such as fondling or groping, it would be considered sexual harassment, even if it were displayed only once. Other less obvious behaviors can become sexual harassment if they are repeated.

5. Range of Behaviors. There is a wide range of behaviors, from leering to rape, which can be unwelcome, sexual, and work-connected and can, therefore, constitute sexual harassment. Some behavior may be unwelcome and work-connected, but not sexual (for example, performance counseling). This behavior is not sexual harassment. To make it easier to understand, it is helpful to think of the entire range of possible behavior in terms of a traffic light. The traffic light has three colors, and behavior may be divided into three zones. Green on the traffic light means "go"; behavior in the green zone means "it's acceptable." It is not sexual harassment. Red on the traffic light means "stop"; the red behavior zone means "don't do it." It is sexual harassment. The third color on the traffic light, yellow, means "use caution." The yellow behavior zone may be sexual harassment. Just as with a traffic light, if in the yellow zone long enough, the light will turn red. If yellow zone behavior is repeated enough, especially after having been told it is unwelcome, it becomes red zone behavior--sexual harassment. The

Enclosure (2)

following examples illustrate these three types of behavior, but they are certainly not all inclusive:

a. Green zone. These behaviors are not sexual harassment: performance counseling, touching which could not reasonably be perceived in a sexual way (such as touching someone on the elbow), counseling on military appearance, social interaction, showing concern, encouragement, a polite compliment, or friendly conversation.

b. Yellow zone. Many people would find these behaviors unacceptable, and they could be sexual harassment: violating personal "space", whistling, questions about personal life, lewd or sexually suggestive comments, suggestive posters or calendars, off color jokes, leering, staring, repeated requests for dates, foul language, unwanted letters or poems, sexually suggestive touching, or sitting or gesturing sexually.

c. Red zone. These behaviors are always considered sexual harassment: sexual favors in return for employment rewards, threats if sexual favors are not provided, sexually explicit pictures (including calendars or posters) or remarks, using status to request dates, or obscene letters or comments. The most severe forms of sexual harassment constitute criminal conduct, e.g., sexual assault (ranging from forcefully grabbing to fondling, forced kissing, or rape).

Note: Keep in mind that the above examples are used as guidance only, that individuals believe they are being sexually harassed based on their perceptions, that each incident is judged on the totality of facts in that particular case, and that individuals' judgment may vary on the same facts. Therefore, caution in this area is advised. Any time sexual behavior is introduced into the work environment or among co-workers, the individuals involved are on notice that the behavior may constitute sexual harassment.

NAVAL MEDICAL RESEARCH CENTER DETACHMENT, LIMA PERU
POLICY STATEMENT ON SEXUAL HARASSMENT

This policy reemphasizes my commitment to maintain a work environment free from unlawful discriminatory practices and inappropriate/unprofessional behavior as set forth in NAVMEDRSCHCENTER DET INSTRUCTION 5354.2A.

Leadership is the key to eliminating all forms of unlawful discrimination. Leadership must also be the cornerstone of the efforts to eliminate sexual harassment. In support of this commitment, it is the policy of this Detachment that:

- Sexual harassment is prohibited. All Detachment personnel will be provided a work environment free from sexual harassment.
- All personnel will be educated and trained to the extent possible in the areas of identification, prevention, resolution, and elimination of sexual harassment. All personnel will be made aware of the avenues to resolution or redress.
- Individuals who believe they have been sexually harassed have several avenues to seek resolution or redress. The Officer-in-Charge, and those in supervisory positions will ensure that notification of an incident can be made in a climate that does not tolerate reprisal, intimidation, or further harassment.
- Reported incidents of sexual harassment will be investigated and resolved at the lowest appropriate level, promptly and with sensitivity. The nature of the investigation will depend on circumstances. Confidentiality will be maintained, but every person accused will have a right to face his or her accuser.
- No Detachment employee shall:
 1. commit sexual harassment;
 2. take reprisal against a person who provides information about an incident of alleged sexual harassment;
 3. knowingly make a false accusation of sexual harassment; or
 4. while in a supervisory or command position, condone or ignore sexual harassment of which he or she has knowledge or has reason to have knowledge.

J. K. BAIRD
Officer-in-Charge

Enclosure (3)

NAVAL MEDICAL RESEARCH INSTITUTE DETACHMENT, LIMA, PERU
RESUMEN SOBRE POLITICA AL ACOSO SEXUAL

Esta política hace énfasis mi compromiso de mantener un ambiente de trabajo libre de practicas discriminatorias ilegales y conductas inapropiadas y nada profesionales según lo establece el NAVMEDRSCHCENTER DET INSTRUCTION 5354.2A.

La supervisión es la clave para eliminar todas las formas ilegales de discriminación. La supervisión debe ser la piedra angular de los esfuerzos para eliminar el acoso sexual. En apoyo a este compromiso, es la política de este Destacamento que:

- El acoso sexual esta prohibido. A todo el personal del Destacamento se le proporcionará un ambiente de trabajo libre de acoso sexual.
- El personal será educado y entrenado lo más posible en las áreas de identificación, prevención, solución y eliminación de acoso sexual. A todo el personal, se le hará conocer las vías de solución correctivas disponibles.
- A los individuos que crean haber sido acosados sexualmente se les proporcionarán múltiples vías para buscar una solución correctiva. El Jefe del NMRCd, y aquellos en puestos de supervisión, se asegurarán que la notificación del incidente pueda ser llevado en un clima en el cual no se tolerará represalia, intimidación o acoso.
- Los incidentes reportados de acoso sexual serán investigados y resueltos en el nivel inferior apropiado, rápidamente y con sensibilidad. La naturaleza de la investigación dependerá en las circunstancias. Se mantendrá confidencialidad, pero cualquier persona acusada tendrá derecho en encarar a su acusador.
- Ningún empleado del Destacamento deberá:
 1. cometer acoso sexual;
 2. tomar represalia contra la persona que proporcionó la información sobre un incidente que alega acoso sexual;
 3. con conocimiento hacer una acusación falsa sobre acoso sexual; o
 4. estando en un puesto de supervisión o de comando, condone o ignore el acoso sexual del cual él o ella tiene conocimiento o tiene razones para saberlo.

J. K. BAIRD
Jefe del NMRCd

Enclosure (3)